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UNITED STATES DISTRICT COURT
 DISTRICT OF NEVADA

Donald Allbaugh, on behalf of himself and all)
 others similarly situated)

Plaintiffs,)
 v.)

California Field Ironworkers Pension Trust;)
 Board of Trustees of the California Field)
 Ironworkers Pension Trust, Plan Administrator)
 of the California Field Ironworkers Pension)
 Trust,)

Defendants.)

Case No.: 2:12-cv-00561-JAD-GWF

**AMENDED CLASS ACTION
 COMPLAINT**

This is an action brought by Plaintiff on his own behalf and on behalf of other similarly

1 situated participants of the California Field Ironworkers Pension Trust under the Employee
2 Retirement Income Security Act, as amended, (“ERISA”), 29 U.S.C. § 1001 *et. seq.* to recover
3 pension benefits due, to enforce rights under and remedy violations of the terms of a pension
4 plan and ERISA, for injunctive and other equitable relief to remedy statutory violations and
5 breaches of fiduciary duty and to recover statutory penalties for Defendants’ failure to comply
6 with ERISA’s disclosure requirements.
7

8 **JURISDICTION AND VENUE**

9 1. Jurisdiction of this matter is appropriate pursuant to 29 U.S.C. §1132(e), (f) and
10 28 U.S.C. §1331.

11 2. Venue is proper pursuant to 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391 as
12 Defendants breached their obligations in the State of Nevada, Defendants may be found in the
13 State of Nevada and the plan is administered, in part, in the State of Nevada.
14

15 **PARTIES**

16 3. Commencing in 1970 and continuing at various times through June 30, 2009,
17 Plaintiff Donald Allbaugh (“Plaintiff” or “Mr. Allbaugh”) worked for employers who had
18 contracts with the International Association of Bridge, Structural, Ornamental and Reinforcing
19 Iron Workers (“Ironworkers”), that had signed pension agreements requiring the employer to
20 make contributions to the California Field Ironworkers Pension Trust (the “Plan”). By virtue of
21 his employment, Mr. Allbaugh became eligible for retirement benefits under the Plan and Mr.
22 Allbaugh is and was at all relevant times a Participant in the Plan within the meaning of § 3(7)
23 of ERISA, 29 U.S.C. § 1002(7).
24

25 4. Defendant, the Plan, is a multi-employer defined benefit employee pension
26 benefit plan within the meaning of § 3(2) of ERISA, 29 U.S.C. § 1002(2) which was established
27 and maintained for the purpose of providing retirement benefits for participants and their
28 beneficiaries, including Plaintiff.

1 14. Prior to June 1, 1989, the Plan provided that an employee would receive a full
2 year of "Future Service Credit" under the Plan in any year in which the Plan received employer
3 contributions for 1,400 or more hours for that employee and that employee would receive partial
4 years of "Future Service Credit" in any year in which the Plan received employer contributions
5 for 350 or more hours.
6

7 15. ERISA, 29 U.S.C. § 203(a), 29 U.S.C. § 1053(a) and the Internal Revenue Code
8 ("IRC"), 26 U.S.C. § 411(a), provide that: "Each pension plan shall provide that an employee's
9 right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement
10 age..."
11

12 16. Regulations and guidance issued under IRC § 411(a) and ERISA § 203(a) further
13 provide that if the Plan fails to pay a participant his accrued benefits at normal retirement age,
14 the Plan must provide an actuarial increase to account for the delay in the participant's receipt of
15 his accrued and nonforfeitable benefits.
16

17 17. Prior to June 1, 1989, Article VI, Section 10 of the Plan provided:

18 A pension benefit to which an Active Participant or Vested Participant is entitled
19 under this Plan upon his attainment of Normal Retirement Age is nonforfeitable,
20 subject, however, to retroactive amendment made within the limitations of
21 Section 411(a)(3)(C) of the Internal Revenue Code and Section 302(c)(8) of
22 ERISA. The benefits to which a surviving legal spouse is entitled shall likewise
23 be nonforfeitable. Participants and beneficiaries shall be entitled to any of the
24 other benefits of this Plan subject to all of the applicable terms and conditions.
25 An Active Participant attains status as a Vested Participant [sic] when he has
26 fulfilled the service requirements for receipt after Normal Retirement Age and
27 retirement of a nonforfeitable pension.
28

18 18. As of June 1, 1989, Mr. Allbaugh had obtained vested rights to his accrued
25 benefits.
26

27 19. Prior to June 1, 1989, there was no maximum limitation under the Plan on the age
28 at which an employee could accrue "Future Service Credits" and a participant could work past
normal retirement age and accrue benefits for all time worked.

1 20. Under the Plan, prior to June 1, 1989, and consistent with ERISA and the IRC, a
2 participant whose benefits did not commence at normal retirement age and whose benefits were
3 not suspended in accordance with ERISA, the IRC and governing regulations, was entitled to
4 receive, upon retirement, both the benefits earned after age 65 and the actuarial equivalent of his
5 accrued benefits, whenever payment of such accrued benefits were delayed past normal
6 retirement age.
7

8 21. ERISA regulations promulgated by the Department of Labor (“DOL”), issued
9 under the nonforfeitability requirements of ERISA § 203 and IRC § 411(a)(3)(C), provide:

10 No payment shall be withheld by a plan pursuant to this section unless the plan
11 notifies the employee by personal delivery or first class mail during the first
12 calendar month or payroll period in which the plan withholds payments that his
13 benefits are suspended. Such notification shall contain a description of the
14 specific reasons why benefit payments are being suspended, a general description
15 of the plan provisions relating to the suspension of payments, a copy of such
16 provisions, and a statement to the effect that applicable Department of Labor
17 regulations may be found in § 2530.203-3 of the Code of Federal Regulations. In
18 addition, the suspension notification shall inform the employee of the plan's
19 procedure for affording a review of the suspension of benefits.

20 29 CFR § 2530.203-3. In accordance with the regulations, the notice that must be provided in
21 order to withhold any payments must contain: (1) the specific reasons for the suspension, (2) a
22 description of the relevant plan provisions relating to the suspension of payments, (3) a copy of
23 the Plan provisions (4) reference to the where the applicable ERISA regulations may be found
24 and (5) a statement of the procedures for securing a review of the suspension.
25

26 22. At all relevant times, the Plan also provided that the Plan Administrator shall give
27 a participant notice of any suspension of benefits by personal delivery or first class mail during
28 the first calendar month in which the benefits are withheld and that such notice must contain the
specific reasons for the suspension, a description of the relevant plan provisions, reference to the
applicable ERISA regulations and a statement of the procedures for securing a review of the
suspension.

1 23. At all relevant times, the Plan also provided that “[a] Participant shall be entitled
2 to a review of a determination suspending his benefits by written request filed with the Trustees
3 within 180 days of the notice of suspension of benefit.”

4 24. In violation of the terms of the Plan and ERISA, during the time that Mr.
5 Allbaugh continued his employment past age 65, the Plan never provided him with the notices
6 required under ERISA and the terms of the Plan that his retirement benefits were going to be or
7 had been suspended.

8 25. By letter dated July 9, 2011, Mr. Allbaugh requested:

9
10 a copy of my complete plan file, including, but not limited to all...correspondence
11 to me and communications to me and any and all documents, correspondence or
12 communications that were relevant to the decision to deny my claim and appeal
13 including but not limited to any and all documents generated, considered or relied
14 on in determination of my claim and appeal.

15 26. The correspondence and communications that Mr. Allbaugh requested and that
16 were produced by the Plan Administrator on or about August 20, 2011 did not contain any notice
17 to Mr. Allbaugh that his benefits would be suspended.

18 27. In or around December 2008, the Plan sent a notice to Mr. Allbaugh advising him
19 that if he delayed starting his retirement until after age 65, his benefit would be actuarially
20 increased as follows:

21 For those Participants applying for a Regular Pension

22 [I]f you chose to delay retiring (i.e., delay commencement of your pension
23 benefits) until after age 65, your benefit will be actuarially increased.

24 28. Upon information and belief, the December 2008 notice was sent to all active
25 Plan participants.

26 29. By an amendment purporting to be effective on or about June 1, 1989, the Plan
27 was amended to provide that a participant who works more than 40 hours in covered
28 employment following obtainment of normal retirement age would no longer receive the full

1 value of benefits accrued following attainment of normal retirement age. Rather, the Plan as
 2 amended effective on or about June 1, 1989, provides that a participant whose benefits were not
 3 suspended would receive only the greater of: 1) a pension benefit based on all of his years of
 4 pension credit or 2) the accrued benefit at normal retirement age actuarially increased for each
 5 month that benefits were not suspended beginning at normal retirement age, and ending on the
 6 earlier of the last day of the month immediately preceding the annuity starting date, or March 31
 7 of the calendar year following the calendar year in which the participant attained age 70 ½.

9 30. The Plan, as amended effective on or about June 1, 1989, provides that for
 10 participants who delay starting retirement benefits until after the participant's normal retirement
 11 age, the monthly benefit shall be the greater of:

12 (1) The total years of Pension Credit accrued at his Annuity Starting Date
 13 multiplied by the applicable amount in Section 3 of Article III; or

14 (2) The accrued benefit at Normal Retirement Age actuarially increased for each
 15 complete calendar month for which benefits were not suspended during the period
 16 beginning at Normal Retirement Age, and ending on the earlier of the last day of
 17 the month immediately preceding the Annuity Starting Date, or March 31 of the
 18 calendar year following the calendar year in which the Participant attained age 70
 19 ½.

20 The actuarial increase described in paragraph (2) shall be 1% per month for the
 21 first 60 months after Normal Retirement Age and 1.5% per month for each month
 22 thereafter.

23 31. ERISA § 204(g), 29 U.S.C. § 1054(g), provides, *inter alia*: "The accrued benefit
 24 of a participant under a plan may not be decreased by an amendment of the plan."

25 32. The June 1, 1989 amendment eliminating the right of participants for whom
 26 benefits have not been suspended to receive the full value of benefits accrued past normal
 27 retirement age *in addition to* an actuarial adjustment to account for the delay in receipt of
 28 benefits following the attainment of normal retirement age, violates ERISA § 204(g).

1 33. ERISA § 204(h), 29 U.S.C § 1054(h), in effect as of June 1, 1989, provided that a
2 pension plan “may not be amended so as to provide for a significant reduction in the rate of
3 future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days
4 before the effective date of the plan amendment, the plan administrator provides a written notice,
5 setting forth the plan amendment and its effective date...” to each plan participant.
6

7 34. In violation of ERISA § 204(h), 29 U.S.C. § 1054(h), no notice of the significant
8 reduction in future benefit accruals effectuated by the June 1, 1989 amendment was provided.

9 35. In or around September, 2009 (Mr. Allbaugh’s “delayed retirement date”), Mr.
10 Allbaugh chose to retire when he was age 67 years and 1 month old.

11 36. Pursuant to ERISA and the terms of the Plan, Defendants were required to
12 provide to Mr. Allbaugh both his actuarial increase for the delay in the commencement of his
13 pension benefits and the pension credit he earned for working from his normal retirement age
14 through his delayed retirement date.
15

16 37. On September 23, 2009, the Plan provided Mr. Allbaugh with a summary of his
17 pension calculation.

18 38. Even though Defendants had advised Mr. Allbaugh that his pension would be
19 actuarially increased if he retired after age 65, and even though Mr. Allbaugh did in fact delay
20 retiring until after age 65 and chose to retire at age 67, Defendants failed to provide Mr.
21 Allbaugh with the actuarial increase he was entitled to receive as a result of delaying his
22 retirement.
23

24 39. Instead, Defendants applied the unlawful amendment to Mr. Allbaugh and
25 informed him that they would only provide him with the greater of the benefit he earned between
26 normal retirement age and his delayed retirement date or the actuarial equivalent of the benefits
27 he had accrued as of age 65.
28

1 40. By emails and letters dated December 14, 2009, December 28, 2009, January 25,
2 2010 and February 10, 2010, Mr. Allbaugh appealed the determination of his benefits, including,
3 *inter alia*, the failure to provide an actuarial increase to account for the delay in his receipt of
4 benefits after attainment of age 65.

5 41. By letter dated March 12, 2010, the Defendant Plan Administrator denied Mr.
6 Allbaugh's appeal.

7 42. In addition to violating ERISA and the terms of the Plan by failing to provide
8 both an actuarial increase for the delay in the commencement of his pension benefits and the
9 pension credit he earned for working from his normal retirement age through his delayed
10 retirement, the Plan failed to calculate the actuarial increase due to Mr. Allbaugh for the delay in
11 receipt of benefits after age 65 and failed to calculate and pay Mr. Allbaugh the greater of the
12 benefits he had accrued by working past age 65 and the actuarial increase due for the delay in
13 his receipt of benefits.

14 43. The Plan incorrectly advised Mr. Allbaugh that it had determined that the benefit
15 he had accrued following normal retirement age was higher than the actuarial increase when it
16 had not calculated the benefit actuarially increased following normal retirement age and when
17 the benefit actuarially increased following normal retirement age was higher than the benefits
18 Mr. Allbaugh accrued following normal retirement age

19 44. Even though the actuarial increase due to Mr. Allbaugh was greater than the
20 benefits he had accrued by working past age 65, Defendants refused to provide Mr. Allbaugh
21 with his actuarial increase.

22 45. In violation of the terms of the Plan and ERISA, the Defendant Plan also failed to
23 provide Mr. Allbaugh with an actuarial increase in his benefits to account for the months,
24 following his attainment of age 65, that he was not working in covered employment and not
25 receiving retirement benefits.

1 46. Mr. Allbaugh has exhausted his administrative remedies.

2 47. The Defendant Plan Administrator is a board of trustees composed of equal
3 numbers of individuals who are appointed by employers who are required to make contributions
4 to the Plan and individuals who are appointed by the local unions and by the District Council of
5 Ironworkers for the State of California.
6

7 48. Active employees elect the union officials who in turn appoint the union trustees
8 for the Plan.

9 49. The Ironworkers and its local unions and the union representatives on the Board
10 of Trustees represent the interests of active employees during the collective bargaining process.
11 Retired employees have no vote in local union elections and do not get to elect any of the local
12 union officials nor the trustees that serve on the Board of Trustees.
13

14 50. Employer trustees have a conflict of interest in that they and the employers who
15 they represent have a financial interest in the Plan because they are required to contribute the
16 money used to fund the benefits under the collective bargaining agreements with the Ironworkers
17 and because they may be liable under ERISA's withdrawal liability provisions if they withdraw
18 from the Plan and the Plan is underfunded.

19 51. The union trustees must answer to the active employees who elect them. They are
20 engaged in collective bargaining with employers including with the employer trustees. The union
21 trustees have a conflict of interest in favor of active employees who elect them to office and on
22 whose behalf they bargain with employers.
23

24 52. This type of plan, that purports to represent retirees but provides no retiree
25 representation on its Board of Trustees, has a structural conflict of interest.

26 53. By letter dated September 28, 2009, Mr. Allbaugh made a written request to the
27 Plan Administrator for the tables used to calculate his actuarial factors. He did not receive any
28 such tables until December 15, 2009.

1 57. Upon information and belief, Defendants have systematically failed and are
2 systematically failing to provide notices of suspensions of benefits as required by ERISA and the
3 terms of the Plan despite the requirement under the Plan and ERISA to do so.

4 58. There are questions of law and fact common to the members of the Class and
5 subclass including whether declaratory and injunctive and other equitable relief is appropriate
6 and whether Defendants have violated ERISA and the terms of the Plan including, *inter alia*:
7 whether the Plan suspended class members' retirement benefits and failed as a matter of
8 customary practice to provide a notice of suspension of benefits for all employees who worked
9 past normal retirement age in violation of the terms of the Plan and Section 203 of ERISA and
10 the applicable regulations; whether Defendants retroactively reduced accrued benefits and failed
11 to give notice of a significant reduction in the rate of benefit accrual in violation of Section
12 204(g) and (h) of ERISA, whether Defendants failed to calculate and pay the greater of the
13 normal retirement benefit actuarially increased for the delay in the commencement of his pension
14 benefits and the pension credit earned for working from normal retirement age through delayed
15 retirement to participants whose benefits were not suspended and whether Defendants breached
16 their fiduciary duties to Class members.

17 59. The claims of Plaintiff are typical of the claims of the Class in that Plaintiff and
18 all Class members have the same rights under the plan documents and under ERISA and
19 challenge the same conduct and because resolution of the claims will provide common answers
20 to all members of the Class in that all Class members suffered the same actual harm caused by
21 the same Plan and ERISA violations complained of herein.

22 60. Plaintiff will fairly and adequately represent the interests of the Class members.
23 He has diligently pursued his claim and appeal and has engaged the undersigned experienced
24 ERISA and class action counsel.

1 65. ERISA § 203(a), 29 U.S.C. § 1053(a) provides in relevant part that "Each pension
2 plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon
3 the attainment of normal retirement age..."

4 66. ERISA § 3(24), 29 U.S.C. § 1002(24) defines "accrued benefit" as "the
5 individual's accrued benefit determined under the plan and, except as provided in section
6 1054(c)(3) of this title, expressed in the form of an annual benefit commencing at normal
7 retirement age ..."

8 67. ERISA § 204(c)(3), 29 U.S.C. § 1054(c)(3) provides in pertinent part: "if an
9 employee's accrued benefit is to be determined as an amount other than an annual benefit
10 commencing at normal retirement age ... the employee's accrued benefit ... shall be the actuarial
11 equivalent of such benefit ..."

12 68. Pursuant to ERISA § 203(a)(3)(B), 29 U.S.C. § 1053(a)(3)(B), and applicable
13 regulations, an unlawful forfeiture of benefits occurs if a plan suspends payment of benefits after
14 normal retirement age unless the plan provides the detailed notice prescribed by the regulations
15 by personal delivery or first class mail in the first calendar month or payroll period in which the
16 benefits are suspended.

17 69. The ERISA regulation implementing ERISA § 203(a)(3)(B), 29 U.S.C. §
18 1053(a)(3)(B), provides in pertinent part:
19

20 Notification. No payment shall be withheld by a plan pursuant to this section
21 unless the plan notifies the employee by personal delivery or first class mail
22 during the first calendar month or payroll period in which the plan withholds
23 payments that his benefits are suspended. Such notification shall contain a
24 description of the specific reasons why benefit payments are being suspended, a
25 general description of the plan provisions relating to the suspension of payments,
26 a copy of such provisions, and a statement to the effect that applicable
27 Department of Labor regulations may be found in § 2530.203-3 of the Code of
28 Federal Regulations. In addition, the suspension notification shall inform the
employee of the plan's procedure for affording a review of the suspension of
benefits.

29 C.F.R. § 2530.203-3(b)(4).

1 70. By the acts and omissions complained of above Defendants violated ERISA
2 applicable regulations, and the terms of the Plan.

3 71. As a proximate result of Defendants' unlawful acts and omissions, Mr. Allbaugh
4 and Class members have been harmed and, *inter alia*, have been deprived of vested and accrued
5 benefits due or to become due and of statutory rights protected by ERISA.
6

7 72. Section 502 (a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B), provides that:

8 A civil action may be brought -

9 (1) by a participant or beneficiary - . . .

10 (B) to recover benefits due to him under the terms of the plan, to enforce
11 his rights under the terms of the plan, or to clarify his rights to future
12 benefits under the terms of the plan.

13 73. Section 502(a)(3) of ERISA provides that a civil action may be brought by a
14 participant (A) to enjoin any act or practice which violates any provision of Title I of ERISA or
15 the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such
16 violations or (ii) to enforce any provisions of Title I of ERISA or the terms of the plan.

17 74. Plaintiff and Class members are entitled to declaratory, injunctive and other
18 equitable relief, including but not limited to, an order declaring that Defendants violated ERISA
19 §§ 203 and 204(c) and the regulations thereunder, enjoining Defendants from suspending
20 benefits for any calendar month or payroll period prior to furnishing the notices required by
21 ERISA and the terms of the Plan, making Plaintiff and class members whole for the unlawful
22 suspension of their pension benefits by requiring payment of the actuarial equivalent of such
23 benefits plus the additional benefits accrued to each Class member while working during any
24 period for which benefits were unlawfully withheld, enjoining Defendants from violating ERISA
25 and the terms of the Plan and such other and further relief as to the Court is just and proper
26 together with pre-judgment interest, attorneys' fees and costs.
27
28

COUNT TWO
(TO REDRESS VIOLATION OF ERISA'S ACCRUAL OF BENEFITS
REQUIREMENTS PURSUANT TO SECTIONS 502(a)(1)(B) AND (a)(3))

75. Plaintiff repeats and realleges each allegation set forth in the prior paragraphs as though fully set forth herein.

76. Section 204(g) of ERISA, 29 U.S.C. § 1054(g), provides in part:

(g) Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. ...

77. Section 204(h) of ERISA, 29 U.S.C. § 1054(h), as in effect on June 1, 1989 provided in relevant part:

(h) Notice of Significant Reductions in Benefit Accruals

(1) A plan described in paragraph (2) may not be amended so as to provide for a significant reduction in the rate of future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to—

(A) each participant in the plan,

(B) each beneficiary who is an alternate payee (within the meaning of section 1056(d)(3)(K) of this title) under an applicable qualified domestic relations order (within the meaning of section 1056(d)(3)(B)(i) of this title)...

78. By the acts and omissions complained of above, including, *inter alia*, by amending the Plan to reduce accrued benefits, by failing to give notice of a significant reduction in the rate

1 of future benefit accruals, by failing to disclose Plan amendments and by calculating and paying
2 benefits and determining the right to benefits based on unlawful and/or undisclosed Plan
3 amendments, Defendants violated ERISA, including, *inter alia* ERISA §§ 204(g) and (h) and
4 applicable regulations.

5 79. As a proximate result of Defendants' violations of ERISA, Mr. Allbaugh and Class
6 members have been harmed and, *inter alia*, have been deprived of vested and accrued benefits
7 due or to become due.

8 80. Plaintiff and Class members are entitled to declaratory, injunctive and other
9 equitable relief, including but not limited to, an order declaring that Defendants violated ERISA
10 § 204 and applicable regulations, enjoining Defendants from failing to provide both an actuarial
11 increase for working past normal retirement age plus all additional benefits accrued to each Class
12 member after normal retirement age and to immediately pay all benefits wrongfully withheld,
13 surcharging the fiduciaries, reforming the Plan, *inter alia*, to eliminate the provisions of the Plan
14 amendment purporting to permit payment of only the greater of an actuarial adjustment for
15 delayed normal retirement benefits or the benefits accrued after normal retirement age and
16 declaring that such amendment never became effective and enjoining Defendants to pay benefits
17 in accordance with the terms of the Plan as reformed, such other and further relief as to the Court
18 is just and proper, together with pre-judgment interest, attorneys' fees and costs.

19
20
21
22 **COUNT THREE**
23 **(TO REDRESS DEFENDANTS' VIOLATIONS OF ERISA FIDUCIARY DUTY**
24 **REQUIREMENTS)**

25 81. Plaintiff repeats and realleges each allegation set forth in the prior paragraphs as
26 though fully set forth herein.

27 82. ERISA Section 404(a)(1), 29 U.S.C. § 1104(a)(1) provides in relevant part:

28 (1) Subject to Sections 403(c) and (d), 4042, and 4044, a fiduciary shall discharge

1 his duties with respect to a plan solely in the interest of the participants and
2 beneficiaries and—

3 (A) for the exclusive purpose of:

4 (i) providing benefits to participants and their beneficiaries; and

5 (ii) defraying reasonable expenses of administering the plan;

6 (B) with the care, skill, prudence, and diligence under the circumstances then
7 prevailing that a prudent man acting in a like capacity and familiar with such
8 matters would use in the conduct of an enterprise of a like character and with like
9 aims;

10 ***

11 (D) in accordance with the documents and instruments governing the plan insofar
12 as such documents and instruments are consistent with the provisions of this title
13 and title IV.

14 83. Defendants have a fiduciary responsibility to provide Plaintiff and Class members
15 with truthful and adequate disclosures of the consequences of continuing to work past normal
16 retirement age and to administer the plan in accordance with ERISA and the documents and
17 instruments governing the plan insofar as such documents and instruments are consistent with
18 ERISA.

19 84. By the acts and omissions complained of above, including, *inter alia*, promising
20 participants that they would receive an actuarial increase in their normal retirement benefits if
21 they chose to delay retiring until after age 65, by failing to give notice to participants that the
22 plan was amended to provide only the greater of the benefits accrued by working past normal
23 retirement age or the actuarial equivalent of their normal retirement benefits, by failing to
24 provide notice of benefit suspensions, by applying amendments to retroactively decrease accrued
25 benefits and by depriving Plaintiff and Class members of rights protected by ERISA and the
26 terms of the Plan, Defendants breached their fiduciary duties to Plaintiff and Class members.

27 85. As a proximate result of Defendants' breaches of fiduciary duty, Plaintiff and
28 Class members have been harmed and, *inter alia*, been deprived of rights protected by the terms
of the Plan and ERISA.

86. Plaintiff and Class members are entitled to declaratory, injunctive and other
equitable relief, including but not limited to, an order declaring that Defendants breached their

1 fiduciary duties and violated ERISA Section 404 of ERISA and applicable regulations, enjoining
 2 Defendants from failing to provide both an actuarial increase for working past normal retirement
 3 age plus all additional benefits accrued to each Class member after normal retirement age
 4 surcharging the fiduciaries, reforming the Plan, *inter alia*, to eliminate the provisions of the plan
 5 amendment purporting to permit payment of only the greater of an actuarial adjustment for
 6 delayed normal retirement benefits or the benefits accrued after normal retirement age and
 7 declaring that such amendment never became effective, such other and further relief as to the
 8 Court is just and proper, together with pre-judgment interest, attorneys' fees and costs.

10 **COUNT FOUR**
 11 **(TO REDRESS DEFENDANTS' VIOLATION OF THE TERMS OF THE PLAN**
 12 **PURSUANT TO ERISA SECTIONS 502(a)(1)(B))**

13 87. Plaintiff repeats and realleges each allegation set forth in the prior paragraphs as
 14 though fully set forth herein.

15 88. As set forth above, the Plan fails to calculate Mr. Allbaugh and Class members'
 16 accrued benefits actuarially increased for each month after normal retirement age to their delayed
 17 retirement dates and pay the greater of the accrued benefits actuarially increased for each month
 18 after normal retirement age or the benefits accrued following normal retirement age.

19 89. Mr. Allbaugh's benefits at normal retirement age actuarially increased for each
 20 month after normal retirement age to his delayed retirement date were greater than the total years
 21 of Pension Credit accrued at the Annuity Starting Date.

22 90. Defendants failed to calculate and provide Mr. Allbaugh and Class members with
 23 the greater of the benefits at normal retirement age actuarially increased for each month after
 24 normal retirement age to their delayed retirement dates or their total years of Pension Credit
 25 accrued at the Annuity Starting Date.
 26
 27
 28

1 agreement, contract, or other instruments under which the plan is established or
2 operated.

3 97. Section 502(c)(1)(B) of ERISA, 29 U.S.C. § 1132(c)(1)(B), provides in pertinent
4 part:

5 Any administrator. . . (B) who fails or refuses to comply with a request for any
6 information which such administrator is required by this title to furnish to a
7 participant or beneficiary (unless such failure or refusal results from matters
8 reasonably beyond the control of the administrator) by mailing the material
9 requested to the last known address of the requesting participant or beneficiary
10 within 30 days after such request may, in the court's discretion, be personally
11 liable to such participant or beneficiary in the amount of up to [\$100] a day from
12 the date of such failure or refusal and the court may in its discretion order such
13 other relief as it deems proper... For purposes of this paragraph, . . . each violation
14 described in subparagraph (B) with respect to a single participant or beneficiary,
15 shall be treated as a separate violation.

16 98. Pursuant to the Debt Collection Improvement Act of 1996 (62 Fed. Reg.
17 40696) the \$100 limit referred to in Section 502(c) of ERISA was increased to \$110. 29
18 C.F.R. § 2575.502(c)(1) therefore states in pertinent part that: "The maximum amount of
19 the civil monetary penalty established by Section 502(c)(1) of...ERISA [has been]
20 increased from \$100 a day to \$110 a day."

21 99. As set forth above, despite Mr. Allbaugh's requests and a legal obligation to
22 furnish documents and to allow Mr. Allbaugh to examine Plan documents at the offices of the
23 Union, Defendants actively discouraged Plaintiff from seeking and examining documents to
24 which he was entitled under ERISA, delayed in producing documents and denied Plaintiff access
25 to documents which the Defendants were required to furnish and which Plaintiff was entitled to
26 review and receive under § 104 of ERISA, 29 U.S.C. § 1024 and the regulations thereunder.
27 Upon information and belief, Defendant Plan Administrator's failure to timely furnish
28 documents did not result from matters beyond its control.

1 100. As a result of Defendants' acts and omissions set forth above Plaintiff has been
2 harmed and his right to benefits and to pursue his claims for benefits was chilled, delayed and
3 thwarted.

4 101. Defendant Plan Administrator should be enjoined to timely furnish and permit in-
5 person examination of Plan documents and should be assessed a penalty of \$110 per day for each
6 separate violation for every day following 30 days after Plaintiff's first document request that
7 Defendants failed to produce or permit inspection of the requested documents through the date
8 each requested document was furnished to Plaintiff, together with costs and attorneys' fees.

9
10 WHEREFORE, Plaintiff requests that Judgment be entered in his favor against
11 Defendants as follows:

- 12 A. Declaring that Defendants violated the terms of the Plan;
13
14 B. Declaring the Defendants violated ERISA §§ 104, 203, 204 and 404 and
15 regulations thereunder;
16
17 C. Enjoining Defendants from violating the terms of the Plan;
18
19 D. Enjoining Defendants from violating ERISA §§ 104, 203, 204 and 404 and
20 regulations thereunder;
21
22 E. Reforming the Plan, *inter alia*, to eliminate the provisions of the Plan amendment
23 purporting to permit payment of only the greater of an actuarial adjustment for
24 delayed normal retirement benefits or the benefits accrued after normal retirement
25 age and declaring that such amendment never became effective and enjoining
26 Defendants to pay benefits in accordance with the terms of the Plan as reformed;
27
28 F. Surcharging the fiduciaries for the harm caused by their breaches of fiduciary
duties so as to make Plaintiff and Class members whole;

- 1 G. Enjoining Defendants to provide Plaintiff and Class members with an actuarial
2 adjustment to their benefits for the delay in receiving benefits from normal
3 retirement age through their delayed retirement date together with all benefits
4 accrued between normal retirement age and their delayed retirement date;
5
6 H. Enjoining Defendants to recalculate and pay Plaintiff and Class Members'
7 benefits in accordance with the terms of the Plan;
8
9 I. Awarding Plaintiff and Class members all benefits wrongfully withheld;
10
11 J. Awarding Plaintiff \$110 per day for each day past 30 that Defendants delayed in
12 producing Plan documents until Defendants complied with Plaintiff's request for
13 documents and information to which Plaintiff is entitled under ERISA;
14
15 K. Awarding Plaintiff and Class members costs of suit;
16
17 L. Awarding Plaintiff and Class members pre-judgment and post-judgment interest;
18
19 M. Awarding Plaintiff and Class members all attorneys' fees under ERISA §502(g)
20 and/or the common fund theory, and
21
22 N. Awarding such other and further relief the Court deems just and proper.

23 DATED this 27th day of May, 2014.

24 **MARTIN & BONNETT, P.L.L.C.**

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CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2014, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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